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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/522,322	03/09/2000	Scott Faber	004704.P002	2806

7590 04/08/2005

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EXAMINER	
MEINECKE DIAZ, SUSANNA M	
ART UNIT	**PAPER NUMBER**
3623	

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/522,322	FABER ET AL.	
	Examiner	Art Unit	
	Susanna M. Diaz	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-51 and 53-58* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-51 and 53-58* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 January 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Final Office action is responsive to Applicant's amendment filed January 6, 2005.

Claims 1, 3, 5, 17, 18, 20, 21, 23-26, 41, 46-49, 53, and 56 have been amended.

Claim 52 has been cancelled.

Claims 57 and 58 have been added.

Claims 1-51 and 53-58 are pending.

Response to Arguments

2. Applicant's arguments with respect to claims 1-51 and 53-58 have been considered but are moot in view of the new ground(s) of rejection, which are necessitated by Applicant's claim amendments.

Claim Objections

3. Claims 44 and 45 are objected to because of the following informalities:

Claims 44 and 45 are duplicate claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-25 have been amended to delete the structural elements (i.e., a communications interface and a controller computer linked with the communications interface), leaving behind only a database (i.e., a mere collection of data) and various logic units (i.e., software *per se*), neither of which is statutory subject matter. Therefore, claims 1-25 are deemed to be non-statutory.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-25 have been amended to delete the structural elements (i.e., a communications interface and a controller computer linked with the communications interface), leaving behind only a database (i.e., a mere collection of data) and various logic units (i.e., software *per se*), neither of which qualifies as a structural element. Therefore, since claims 1-25 do not recite any structural elements, they are not deemed to be proper apparatus claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-7, 9-17, 19, 20, 26-30, 33-43, 46-50, and 56-58 are rejected under 35 U.S.C. 102(e) as being anticipated by Tagawa et al. (US 2005/0010795).

Tagawa discloses a system for recording and delivering information, the system comprising:

[Claim 1] a database to store information recorded by an information provider (Figs. 6, 8; ¶¶ 61, 120, 131 -- The host computer, referred to by Tagawa as belonging to an "information provider," downloads information from the original source of the information, synonymous with the claimed "information provider," to its primary recording medium);

a first logic unit linked with the database to establish a first communications connection with the information provider over which the information provider records the information (Figs. 6, 8; ¶¶ 61, 120, 131 -- The host computer, referred to by Tagawa as belonging to an "information provider," downloads information from the original source of the information, synonymous with the claimed "information provider," to its primary recording medium);

a second logic unit to offer the previously recorded information to a plurality of users (¶¶ 65, 66, 127, 129, 130 -- Users can view and make selections via the Internet); and

a third logic unit linked with the database to establish a second communications connection with a user in response to the user accepting the offer and to deliver the stored information to the user (Figs. 6, 8; ¶¶ 120, 131 -- The host computer downloads information to its primary recording medium. Selected information is then downloaded to a user's PC, i.e., the secondary recording medium);

[Claim 2] wherein the database further stores a description of the information (¶¶ 61, 66, 67, 129);

[Claim 3] a fourth logic unit linked with the database to establish a computer connection with an information provider computer and to receive via the computer connection the description from the information provider (Figs. 6, 8; ¶¶ 61, 65, 70-72, 120, 131);

[Claim 4] wherein the computer connection is established through a web site accessible by the information provider computer (Figs. 6, 8; ¶¶ 61, 65, 66, 120, 127, 129, 131);

[Claim 5] a fourth logic unit linked with the database to establish a computer connection with a user computer and to deliver the description to the user computer via the computer connection (Figs. 6, 8; ¶¶ 61, 65, 66, 70-72, 120, 127, 129, 131);

[Claim 6] wherein the computer connection is established through a web site accessible by the user computer (Figs. 6, 8; ¶¶ 61, 65, 66, 120, 127, 129, 131);

[Claim 7] wherein the description includes a price for the information (¶¶ 67, 70-72, 128);

[Claim 9] wherein the first communications connection includes an audio connection (Figs. 6, 8; ¶¶ 61, 64, 120, 125, 129, 131, 171);

[Claim 10] wherein the first communications connection includes a video connection (Figs. 6, 8; ¶¶ 61, 64, 120, 125, 129, 131, 171);

[Claim 11] wherein the first communications connection is established over a computer network (Figs. 6, 8; ¶¶ 61, 64, 120, 125, 129, 131, 171);

[Claim 12] wherein the first communications connection is established over a telephone network (¶¶ 65, 129, 131);

[Claim 13] wherein the second communications connection includes an audio connection (Figs. 6, 8; ¶¶ 61, 64, 120, 125, 129, 131, 171);

[Claim 14] wherein the second communications connection includes a video connection (Figs. 6, 8; ¶¶ 61, 64, 120, 125, 129, 131, 171);

[Claim 15] wherein the second communications connection is established over a computer network (Figs. 6, 8; ¶¶ 61, 64, 120, 125, 129, 131, 171);

[Claim 16] wherein the second communications is established over a telephone network (¶¶ 65, 124, 129, 131);

[Claim 17] a fourth logic unit to bill the user for the information (Abstract; ¶¶ 16, 24, 69, 72, 90, 101, 103, 116, 123);

[Claim 19] wherein the database further stores information about a user account (Abstract; ¶¶ 16, 24, 69, 72, 90, 101, 103, 116, 123);

[Claim 20] a fourth logic unit to deduct an amount from the user account for the information (Abstract; ¶¶ 16, 24, 69, 72, 90, 101, 103, 116, 123 -- By charging a user, the charged amount is presumably deducted from the user's account).

[Claims 26-30, 33-40] Claims 26-30 and 33-40 recite limitations already addressed by the rejection of claims 1-7, 9-17, 19, and 20 above; therefore, the same rejection applies.

Furthermore, as per claim 30, Tagawa teaches that the description is included in a list of information providers (Figs. 3, 5, 9).

[Claims 41-43, 46-50, 56] Claims 41-43, 46-50, and 56 recite limitations already addressed by the rejection of claims 1-7, 9-17, 19, and 20 above; therefore, the same rejection applies.

Furthermore, as per claim 43, Tagawa teaches that the description is included in a list of information providers (Figs. 3, 5, 9).

[Claim 57] Claim 57 recites limitations already addressed by the rejection of claims 1-7, 9-17, 19, and 20 above; therefore, the same rejection applies.

[Claim 58] Claim 58 recites limitations already addressed by the rejection of claims 1-7, 9-17, 19, and 20 above; therefore, the same rejection applies.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 31, 32, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tagawa et al. (US 2005/0010795), as applied to claims 30 and 43 above.

[Claims 31, 32] Tagawa does not expressly teach that the list of information providers is delivered to the user in response to a keyword search (claim 31) or in response to a category selection (claim 32). However, Official Notice is taken that it is old and well-known in the art of the selection of information to purchase and download to narrow down desired search results by either utilizing a keyword search or a category selection. Both practices facilitate speedier retrieval of specifically desired information, especially when one must search through a large amount of data. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to enhance Tagawa's invention with the ability to perform keyword searches (claim 31) and category selection (claim 32) to identify sources of desired information in order to facilitate speedier retrieval of specifically desired information, especially when one must search through a large amount of data.

[Claims 44, 45] Claims 44 and 45 recite limitations already addressed by the rejection of claim 31 above; therefore, the same rejection applies.

12. Claims 8, 18, 21-25, 45, 51, and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tagawa et al. (US 2005/0010795), as applied to claims 1, 7, 17, 19, 41, and 50 above, in view of Yokono et al. (US 2002/0029241).

[Claims 8, 18, 21] Tagawa charges its users for information based on various factors, including a price per information item (Figs. 3, 5), information quality (¶ 118), etc.; however, Tagawa does not expressly teach that the price includes a rate per period of time (e.g., how long the information is delivered to the user). Yokono makes up for this deficiency in its teaching of a public downloading apparatus through which a user may download audio or video information, wherein the price of the downloaded information includes a rate per period of time, i.e., the duration of the download at the public downloading apparatus (Fig. 9; ¶¶ 102, 109, 196-198). Yokono essentially implements an information distribution system (including the delivery of audio and video information, ¶ 79), similar to that of Tagawa, at a public downloading apparatus, thereby expanding the access of such a system to a wider range of customers (¶ 6) while sufficiently compensating the middleman that connects the original source of information to the customers. Since Yokono improves upon the type of information distribution system taught by Tagawa, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Tagawa to incorporate a price that includes a rate per period of time (claim 8), a fifth logic unit to

track how long the information is delivered to the user and the fourth logic unit bills the user based upon how long the information is delivered (claim 18), or a fourth logic unit to track how long the information is delivered to the user and a fifth logic unit to deduct from the user account an amount based upon how long the information is delivered (claim 21) in order to expand the access of Tagawa's system to a wider range of customers (¶ 6) while sufficiently compensating the middleman that connects the original source of information (i.e., Tagawa's host computer) to the customers.

[Claims 22-25] As discussed in the rejection of claims 8, 18, and 21 above, the Tagawa-Yokono combination addresses the claimed concept of charging a user at the time the information is delivered and based on how long the information is delivered to him/her. However, Tagawa does not expressly teach that the amount owed to the information provider is credited to his/her account. Official Notice is taken that it is old and well-known in the art for an information broker to set up an account for an information provider and then credit the information provider's account accordingly. This allows for quicker reconciliation of charges among the original information provider, information broker, and end customers. Furthermore, while Yokono's fee based on connection time is paid to the middleman between the original information provider and the customer, Yokono does not expressly teach that the amount actually paid to the original information provider is based on this length of connection time. However, the Examiner submits that the connection time is likely based on the size of the transmission. Tagawa states that a higher price may be set for higher quality music (¶ 118). The provision of higher quality music often requires that the original information

source generate information in a higher quality format. Since Tagawa's host computer can charge based on the quality of information and it is old and well-known in the art of communications that higher quality information often requires longer download time to transmit due to increased file size, the Examiner submits that the original source of information would also charge accordingly based on the quality of information provided (which commonly affects the download time). Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the Tagawa-Yokono combination to include a fourth logic unit to credit an amount to the account when the information is delivered to the user (claim 23), a fourth logic unit to track how long the information is delivered to the user and a fifth logic unit to credit to the account an amount based upon how long the information is delivered (claims 24, 25), wherein the database further stores information about an account set up for the information provider (claim 22) in order to facilitate quicker reconciliation of charges among the original information provider, information broker, and end customers while more appropriately compensating original information providers for higher quality sources of information, which often require longer download times.

Additionally, as per claim 25, Official Notice is taken that it is old and well-known in the art for an information broker to charge an extra fee to compensate any additional expenses incurred as part of his/her services. Since Tagawa and Yokono discuss information brokerage systems, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to incorporate with

the Tagawa-Yokono combination a fourth logic unit to track how long the information is delivered to the user and a fifth logic unit to credit to the account an amount based upon how long the information is delivered minus a fee in order to compensate Tagawa's host computer with any additional expenses incurred as part of his/her services.

[Claims 51, 53-55] Claims 51 and 53-55 recite limitations already addressed by the rejection of claims 8, 18, and 21-25 above; therefore, the same rejection applies.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (703) 305-1337. The examiner can normally be reached on Monday-Friday, 9 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 4, 2005

Susanna Diaz

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